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APPENDIX

Supreme Court, U.S.
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Supreme Court of the United States

OCTOBER TERM, 1970

No. 573

CLAUDE R. KIRK, JR., ET AL.,

Appellants,

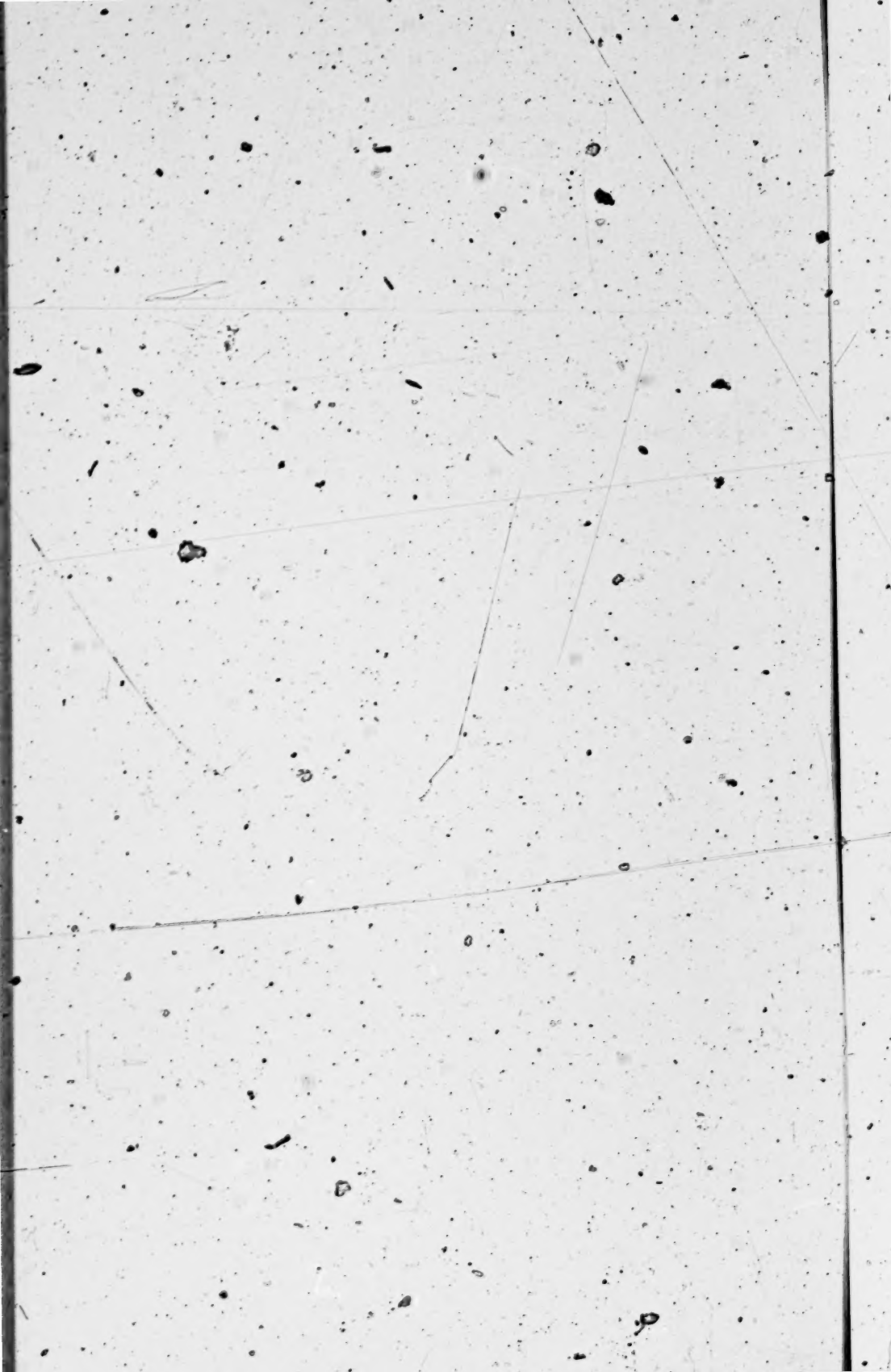
—v.—

ROBERT H. HARGRAVE, ET AL.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

JURISDICTIONAL STATEMENT FILED AUGUST 21, 1970
PROBABLE JURISDICTION NOTED NOVEMBER 9, 1970



IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 573

CLAUDE R. KIRK, JR., Governor, State of Florida, RAY C. OSBORNE, Lieutenant Governor, State of Florida, TOM ADAMS, Secretary of State, State of Florida, EARL FAIRCLOTH, Attorney General, State of Florida, FRED O. DICKINSON, JR., Comptroller, State of Florida, BROWARD WILLIAMS, Treasurer, State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education, State of Florida, and DOYLE CONNER, Commissioner of Agriculture, State of Florida,

Appellants.

v.

ROBERT H. HARGRAVE, JAMES EWING BRADY, NANCY TIMBROOK, DEITH BRIGHT, DEAN ARNOLD, BETTY BATTY, VERA LEMON, ANN TILLMAN, RAYMOND GRANT, BILLY BARLOW, DOROTHY McLEAN, C. LARRY BROWN, JUNE PAGE, MILDRED DUNLAP, BENJAMIN J. CRAIN, JR., MARGARET IVERSON, JOHN FRANK BLUDWORTH, JUNE HARGRAVE by her next friend Robert H. Hargrave, PATRICIA BRADY by her next friend James Ewing Brady, ANITA TIMBROOK by her next friend Nancy Timbrook, MICHAEL BRIGHT by his next friend Keith Bright, HAL ARNOLD by his next friend Dean Arnold, GREG BATTY by his next friend Betty Batty, RALPH LEMON, JR. by his next friend Vera Lemon, DONNA TILLMAN by her next friend Ann Tillman, LINDA GRANT by her

next friend Raymond Grant, PHOEBE BARLOW by her next friend Bill Barlow, LINDA MCLEAN by her next friend Dorothy J. McLean, TERRI BROWN by her next friend C. Larry Brown, STEVEN PAGE by his next friend June Page, JOLENE DUNLAP by her next friend Mildred Dunlap, CAROL CRAIN by her next friend Benjamin J. Crain, Jr., CHRISTIAN IVERSON by his next friend Margaret Iverson, and MARGARET BLUDWORTH by her next friend John Frank Bludworth, individually and on behalf of all others similarly situated,

Appellees.

On Appeal from the United States District Court for the Middle District of Florida

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CLAUDE R. KIRK, JR., et al.,
Appellants,

v. Civ. Action No. 68-463T

ROBERT H. HARGRAVE, et al.,
Appellees.

DOCKET ENTRIES

1968

Oct. 31 - Complaint filed.

Oct. 31 - Plaintiffs' motion to convene a three-judge court.

Nov. 22 - Motion of Defendants to dismiss.

Nov. 26 - Hearing on Plaintiffs' motion to convene a three-judge court; and on motion of Defendants to dismiss.

Nov. 26 - Arguments by counsel to the court.

Nov. 26 - Court's ruling that Rule 23, class suit, is not applicable.

Nov. 26 - Defendants' motion to dismiss complaint granted; court ordered dismissal with prejudice.

Nov. 29 - Order granting Defendants' motion to dismiss for lack of jurisdiction, etc.

Dec. 9 - Motion by Plaintiffs for clarification and amendment of order.

Dec. 13 - Defendants' motion to dismiss complaint granted and action dismissed with prejudice for reasons set forth; Plaintiffs' motion for three-judge court denied.

Dec. 18 - Report of argument upon Defendants' motion to dismiss complaint.

Dec. 19 - Plaintiffs' notice of appeal filed.

1969

July 7 - Copy of judgment from USCA reversing and remanding to said District Court with directions to take appropriate steps re. 3-judge court, and copy of bill of costs.

July 23 - Signed copy by Hon. John R. Brown, Chief Judge, 5th Cir., re. 3-judge court.

Sept. 22 - Letter from Plaintiffs' counsel re. notice of intent to file amended complaint.

Oct. 3 - Amended complaint filed; attached Exhibits A-C; request for 3-judge court.

Dec. 22 - Defendants' answer to amended complaint.

1970

Jan. 8 - Affidavit of Hershel Shanks, with attachments.

Jan. 8 - Plaintiffs' motion for summary judgment.

Jan. 9 - Affidavit of Lee Young, with attachments.

Jan. 19 - Motion for summary judgment of Defendants.

May 8 - Order granting Plaintiffs' motion for summary judgment; Defendants enjoined from withholding MFP funds from any county by virtue of provisions of such Act.

June 4 - Notice of appeal to Supreme Court by State Board of Education.

[Caption deleted in printing]

AMENDED COMPLAINT

1. Jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Sect. 1331, 1343, 2201-2202, and 2281; 42 U.S.C. Sect. 1983 and under the Fourteenth Amendment to the Constitution of the United States. The matter in controversy exceeds, exclusive of interests and costs, the sum of Ten Thousand Dollars ($10,000.00).

2. This is a class action pursuant to Rules 23 and 57 of the Federal Rules of Civil Procedure which challenges the validity of Section 23 of Chapter 68-18, Acts of the Florida Legislature (1968) on the basis of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and seeks to enjoin defendants from enforcing said statute.

3. Each of the plaintiffs is a resident of Florida and of the County indicated in the second column below and is either a freeholder and parent or a student in the public schools of Florida as indicated in the third column below:

Name	*County of Residence*	*Freeholder and Parent or Student*
Robert H. Hargrave	Alachua	Freeholder/Parent
James Ewing Brady	Brevard	Freeholder/Parent
Nancy Timbrook	Broward	Freeholder/Parent
Keith Bright	Collier	Freeholder/Parent
Dean Arnold	Columbia	Freeholder/Parent
Betty Batty	Dade	Freeholder/Parent
Vera Lemon	Dade	Freeholder/Parent
Ann Tillman	Duval	Freeholder/Parent
Raymond Grant	Gadsden	Freeholder/Parent
Billy Barlow	Gulf	Freeholder/Parent
Dorothy McLean	Hillsborough	Freeholder/Parent
C. Larry Brown	Leon	Freeholder/Parent
June Page	Nassau	Freeholder/Parent
Mildred Dunlap	Orange	Freeholder/Parent
Benjamin J. Crain, Jr.	Seminole	Freeholder/Parent
Margaret Iverson	Volusia	Freeholder/Parent
John Frank Bludworth	Walton	Freeholder/Parent

Name	*County of Residence*	*Freeholder and Parent or Student*
June Hargrave	Alachua	Student.
Patricia Brady	Brevard	Student
Anita Timbrook	Broward	Student
Michael Bright	Collier	Student
Hal Arnold	Columbia	Student
Greg Batty	Dade	Student
Ralph Lemon, Jr.	Dade	Student
Donna Tillman	Duval	Student
Linda Grant	Gadsden	Student
Phoebe Barlow	Gulf	Student
Linda McLean	Hillsborough	Student
Terri Brown	Leon	Student
Steven Page	Nassau	Student
Jolene Dunlap	Orange	Student
Carol Crain	Seminole	Student
Christian Iverson	Volusia	Student
Margaret Bludworth	Walton	Student

4. Defendants Claude R. Kirk, Jr., Ray C. Osborne, Tom Adams, Earl Faircloth, Fred O. Dickinson, Jr., Broward Williams, Floyd T. Christian, and Doyle Conner are the Governor and the Cabinet of the State of Florida who comprise the membership of the State Board of Education which regulates the amount of state of MFP funds which shall be paid to the County Boards of Public Instruction.

In addition, Defendant Floyd T. Christian is the State Commissioner of Education and is charged with the duty of determining the dollar allocation to each county of MFP funds and of notifying and certifying that determination to the Comptroller. Defendant Fred O. Dickinson, Jr., is the Comptroller of the State of Florida and is charged with the duty of disbursing MFP funds to the individual counties.

5. Funds for public education in Florida are derived

from two sources. The first is taxes of general applicability throughout the state. Some of these state-wide taxes produce moneys for General Revenue, from which the legislature makes appropriations for the purpose of public education. The largest of these taxes of general state-wide applicability is the Sales and Use Tax, which produces greater sums for the General Revenue than do the rest of Florida's state-wide taxes combined. Other state-wide taxes produced funds all or part of which are statutorily "earmarked" specifically for educational uses. For instance, a certain portion of the sums collected from the sales of motor vehicle licenses are required to be turned over to the several county school systems for capital outlay. Still other state-wide taxes, such as the Racing Tax, produce sums all or part of which are required by statute to be given to the several counties for use as they see fit. Funds from state-wide taxes which are either appropriated biennially by the legislature from General Revenue, or which are statutorily earmarked for education, or portions of which are turned over to the counties and distributed in turn to the school systems, provide well over 50% of public education's financial support in Florida. (See Column 3 of Exhibit A)

6. The second major source of funds for the support of Florida public schools are two kinds of taxes levied and collected by each county for its own school system. These taxes provide approximately 39% of the financial support of Florida's public schools. (See Column 4 of Exhibit A.) The first tax, known as "County Millage", is authorized by Article XII, Section 8 of the Florida Constitution, which provides that each county Board of Public Instruction (BPI) is annually required to levy for the support of the county schools not less than 3 nor more than 10 mills of tax on each dollar of assessed value of non-exempt prop-

erty in the county.[1] The second tax, known as "District Millage", is authorized by Article XII, Section 10 of the Florida Constitution, which provides that each county BPI may levy for the support of the county schools up to 10 mills of tax on each dollar of non-exempt property in the county provided such millage is first approved by a majority of the county's qualified voters.[2] Each county holds biennial elections for the purpose of approving District Millage for the following two years.[3] Cumulatively, therefore, the County and District Millage can produce a maximum of 20 mills of tax in any county.[4]

[1] Article XII, Section 8 of the Florida Constitution provides as follows:

> Each county shall be required to assess and collect annually for the support of the public free schools therein, a tax of not less than three (3) mills, nor more than ten (10) mills on the dollar on all taxable property in the same.

[2] Article XII, Section 10 of the Florida Constitution provides in pertinent part as follows:

> The Legislature . . . may provide for the levying and collection of a district school tax, for the exclusive use of public free schools within the district, whenever a majority of the qualified electors thereof that pay a tax on real or personal property shall vote in favor of such levy: Provided, that any tax authorized by this section shall not exceed 10 mills on the dollar in any one year on the taxable property of the district.

Each county now has only one tax district, which is coextensive with the boundaries of the county, pursuant to F.S. Sect. 230.34(1), so that the District Millage and the County Millage are imposed on the same geographical area.

[3] See F. S. 236.32 which establishes procedures for the conduct of district millage elections.

[4] While this was the applicable constitutional framework at the time this suit was filed, the constitution has since been amended. The effect of the amendment is to leave the basic structure unchanged except to provide that the amount of millage which may be approved by the voters is now unlimited.

The applicable provision of the new constitution (Article VII, Section 9, which became effective January 20, 1969) is as follows:

> Counties, school districts, and municipalities may be authorized by law to levy ad valorem taxes and other taxes. Millages are limited to 10 mills for all county purposes, 10 mills for municipal purposes, and 10 mills for school purposes. Bond millages are excluded, and additional millages without limitation are permitted if approved by freeholders paying taxes.

7. Various Federal moneys provide the balance of each county's funds for public education. (See Column 2 of Exhibit A.) The amount available to each county from federal sources is, of course, determined by federal law (and is not questioned here).

8. The amount available to each county from its own local taxes is determined by the amount imposed and collected by the county, subject to the limitations described in Paragraph 6. The amount available to each county from the state is determined by the application of a body of statutes collectively described as the Minimum Foundation Program (MFP). (Florida Statutes Sections 236.01-236.071) MFP is a body of rules which enables the responsible officials of the state to calculate the total cost of funding a minimal educational system in each county, and on this basis the amount of the state's contribution to that system is determined. Although the MFP program forms a background for the issues in this lawsuit, the MFP program's formulas are not challenged here.

9. The Instruction Unit is the touchstone by which the amount of MFP funds for each county is determined. Instruction Units are of several sorts, but are based fundamentally on the number of students in average daily attendance in each county school system.* In order to

*INSTRUCTION UNIT. Twenty-seven students in average daily attendance in a regular classroom situation, grades two through twelve, is called an Instruction Unit—the basic unit of educational statistics in Florida. Since the school year 1967-68 the number of pupils required for a first grade instruction unit has been two less than the number required for instruction units in grades two through twelve. Under certain conditions (isolated location, junior college, kindergarten, exceptional child education, vocational education, and adult education) the number of students in an instruction unit, grades two through twelve, varies from 10 to 27 students in average daily attendance.

In addition to the Instruction Unit, other statistical units, derived from the Instruction Unit, are employed in calculating amounts required for support of the public schools. They include:

determine the minimum funding level for each county school system the total number of Instruction Units assignable to that system is calculated.[3] (See Exhibit B for a sample calculation.) This number is then used as a basis for calculating the minimum amounts needed by each county for teacher salaries,[4] transportation,[5] other current expenses,[6] capital outlay and debt service,[7] and educa-

[3] STS UNIT. For each eight earned instruction units, a county school board may ask for a Special Teacher Services Unit. This unit can be used by the school board to fill a position of librarian; music teacher, speech correctionist, school principal, or any one of the special services that are deemed necessary in providing a balanced school program for all boys and girls.

[4] SUPERVISOR OF INSTRUCTION UNIT. Under the law, a county school board may ask for state financing to pay for one Supervisor of Instruction Unit. This supervisory unit might be filled by a person who is the elementary education supervisor, secondary education supervisor, or the county director of instruction. In the counties with more than 100 instruction units, the school boards are permitted to seek state financing for additional supervisor of instruction units at the rate of one per 100 instruction units or fraction thereof. F.S. Sect. 236.04.

[5] INSTRUCTIONAL SALARIES. Amounts allocable to teacher salaries are determined by use of a formula set forth in F.S. Sect. 2360.7 (1), (2) and (3).

[6] TRANSPORTATION. Funds needed for pupil transportation are allocated for each county on the basis of a formula which employs (a) average daily attendance of pupils transported (rather than Instruction Units), (b) number of miles traveled, and (c) population density, as basic factors. F.S. Sect. 236.05, .07(7).

[7] OTHER CURRENT EXPENSES. The MFP provides county BPI's with $1,050 of state funds per instruction unit to help pay other current expenses such as wages of janitors, fuel, utilities, repairs, classroom supplies, books, and other expenses. Where necessary, however, a county may use this expense money for other needed expenditures. F.S. Sect. 236.07(5).

[8] CAPITAL OUTLAY AND DEBT SERVICE. Funds for capital improvements to the county school systems are provided by Article XII, Sect. 18 of the Florida Constitution, which earmarks a portion of the revenue derived from Motor Vehicle Licenses. These funds, allocated on the basis of Instruction Units, may be used to back bond issues or tax anticipation certificates. See also F.S. Sect. 236.07(7).

tional improvement expenses.[10] To this total is added $550 per instruction unit out of funds derived from state sales taxes. The grand total of these amounts make up the cost of the MFP in each county. (F.S. Sect. 236.07(8).)[11]

10. Once the total calculated cost of the MFP is ascertained, the share of that cost which each county must contribute is computed according to a formula described in a footnote.[12]

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[10] EDUCATIONAL IMPROVEMENT EXPENSE. During 1968-69 there is provided from state funds $1,720 for each instruction unit, which sum is to be used by each county for improvement of the educational program in that county. Educational improvement must be projected for a long range period and applied pursuant to a plan approved by the State Board of Education. The use of the $1,720 during 1968-69 must relate to the part of the long range plan that will be initiated in 1968-69. F.S. Sect. 236.07(6).

[11] There are two additional sources of funds for Florida public schools which are not within the MFP. They are:

CAPITAL OUTLAY. For each of the number of pupils in average daily attendance during the last school year which is in excess of the number of pupils in average daily attendance in the immediately preceding school year, a county BPI may receive from the state up to $800, to be applied to the construction of school facilities; provided, that a matching amount equal to 25% of the state amount first be made available from local sources. F.S. Sect. 236.074.

RETIREMENT MATCHING. Each county receives $500 per instruction unit from sales tax revenue for use in making required contributions to teachers' (and state and county officers') retirement systems. F.S. Sect. 236.075. The state contributions are matched with varying amounts withheld as contributions from teachers' salaries. F.S. Sects. 238.09 and 238.11.

[12] For the 1968-69 school year: First, the yield of 3 mills on 95% of the state's non-exempt property is calculated. This product is then multiplied by an Index of Relative Taxpaying Ability which is calculated for each county and based on sales tax returns, employment levels, farm production, amount of railroad and telegraph property, and automobile tax registration within the county. The result is the county share of MFP cost. F.S. Sects. 236.07(9), 236.071.

For the 1969-70 school year and thereafter, each county will be required to provide as its share of MFP cost a sum equal to the amount that would be produced by the levying of 3 mills of tax on 95% of the assessed valuation of non-exempt property in the county for the preceding calendar year. F.S. Sect. 236.07(9).

11. Once the calculations outlined in paragraphs 10 and 11 are completed, the county share is subtracted from the total MFP cost, and the remainder is allocated by the state to the counties as its share of the county Minimum Foundation Program.

12. As a practical matter no county has been able to finance its schools on the amount of the Minimum Foundation Program alone. All have had to levy higher millages, than those which would produce merely the county's required share of MFP cost. See Exhibit C which compares the millage which each county must levy with the millage it had in fact levied prior to the action of the legislature described in Paragraph 13.

13. In its Extraordinary Session of 1968 the Florida Legislature enacted into law Chapter 68-18, Florida Statutes, Senate Bill No. 77-X(68) (hereinafter, C:68-18). Section 23 of that law (now appearing in F.S. 236.251) dictates that no county can receive its state share of MFP funds if its BPI levies more than 10 mills (plus certain adjustments) of local tax (both County and District Millage) on the non-exempt property in the county.

Section 23 provides as follows:

> Effective July 1, 1968 each county board of public instruction desiring to participate in the minimum foundation program for kindergarten and grades one (1) through twelve (12) shall levy no more than ten (10) mills of tax on the non-exempt assessed valuation of the county, exclusive of voted district building and bus, required debt service, and the millage required for junior college minimum effort.

The latter part of the section refers to other statutes by which counties are required to raise by taxation additional moneys for district building and bus funds (F.S.

Sect. 237.13), for required debt service on school bond issues (F.S. Sections 236.29 and 236.53), and for the county share of junior college support funds (F.S. Sect. 230.0117(7)). Section 23 exempts these amounts from the operation of the 10 mill ceiling.

Thus BPI's may levy an aggregate of up to 10 mills *plus* the minor sums of millage necessary to provide district building and bus funds, funds for debt service and funds for junior college support. These three items are hereinafter referred to as "DB&B". Their additional authorizations (above the basic 10 mill limit) may, but usually do not, add as much as 1.5 mills to the basic 10 mill ceiling. (See Column 2b of Exhibit D.)

The Section 23 prohibition means, however, that the total of both the District and County Millages in any Florida County may not exceed the 10 mill limit, plus DB&B if the county wishes to receive state MFP funds. The remainder of Sect. 23 is of limited relevance and is quoted in a footnote with appropriate explanation.[13]

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[13] Section 23 continues:

> If the application of the above millage limitation creates a condition in any county wherein their 1968-69 current operating budget from state and county tax sources cannot exceed their 1967-68 current operating budget by at least one thousand two hundred dollars ($1,200.00) per instruction unit, the allocation of state funds shall be increased to the extent necessary to provide a one thousand two hundred dollar ($1,200.00) increase per instruction unit in their 1968-69 operating budget. [The original enactment appropriated $1000 per instruction unit and was later amended to provide $1200.]

The purpose of this provision is to prevent the 1968-69 operating budget of any county from falling below an amount equal to $1,200 per Instruction Unit more than the 1967-68 level as a result of the Section 23 ceiling. This situation occurred only in Pinellas County, however. This provision increased the state allocation to Pinellas County by $1,200 per Instruction Unit. This provision has no other application. However, it should be noted that this additional sum does *not* bring the Pinellas County 1968-69 operating budget to the level it would have attained

14. Twenty-four counties now have aggregate millage levels which exceed the Section 23 ceiling (10 mills, plus DB&B) while 43 counties do not.[14] (See Column 3 of Exhibit D.) As a result of Sect. 23, the 24 counties have been required to and have reduced their total millage assessments to the level dictated by Section 23. The effect of the Section 23 ceiling is thus to deprive the school systems of the 24 counties of the millage funds in excess of the Section 23 ceiling which they could have assessed during the school years following the July 1, 1968, effective date of Section 23. The citizens and taxpayers (as well as the students in the schools) of these counties, among whom the plaintiffs are numbered, are thereby arbitrarily denied the right to assess, collect and use the taxes which they have approved and which they deem necessary to the maintenance of good public schools. The limitation is arbitrary because it operates unequally, not only as between those relatively wealthy counties unaffected by the millage limitation and the poorer counties

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had Section 23 not been enacted, i.e., had Pinellas County been permitted to levy and collect the millage which was voted for the 1967-69 biennium. (See Column 1 of Exhibit D).

Section 23 continues in pertinent part:

> The millage limitation of 10 mills in this section may be increased to the extent necessary to replace any decrease in funds from Public Law 874 from the previous year.

This provision affects only three of the counties subject to the 10 mill ceiling of Sect. 23: Brevard, Dixie and Seminole. It is intended to permit counties who have lost federal impact area funds in the 1968-69 school year to recoup this loss through the levying of millage in addition to the 10 mill ceiling. The millages shown as DB&B, etc. in Brevard, Dixie and Seminole counties (in column 2(b) of Exhibit D) include .57, .20 and .13 mills, respectively, which are intended to offset the loss of federal funds.

[14] Two counties, Hamilton and Polk, had millages in excess of 10 when Section 23 was enacted. They have since reduced their millage levels to less than 10; and Section 23 does not, therefore, operate to reduce the millage levels in these counties.

which are affected, but also as between the affected counties themselves.

15. Section 23 of C.68-18 limits the amount by which a county may tax itself to provide funds for the education of its children. The standard by which Section 23 imposes this limitation is the amount of the "non-exempt assessed valuation of the county." The state legislature has authorized each county to impose and collect a specified amount of tax for each dollar of assessed valuation in the county. This standard is arbitrary and unreasonable because it bears no rational relation to the educational needs of the county. By contrast, the MFP funds which the state makes available to the county are based on Instruction Units and thus ultimately on the number of pupils, the amount of special services, supervisory services, capital outlay required, and also upon the amount of transportation needed to get the children to school. Section 23, on the other hand, limits the state's authorization to the counties to tax themselves by a standard related only to the amount of non-exempt property in the county. This standard violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Counties rich in property may, and often do, have few children. Counties poor in property may, and often do, have burgeoning school populations. If the state wishes to place a limit on the extent to which counties may tax themselves to provide funds for the education of their children, it must do so on the basis of the educational needs of the county and not on the basis of a standard which is wholly irrelevant to that need.

The inequities produced can be illustrated in the following tables:

TABLE 1

Dollars Per Child Authorized to be Assessed by the 10 Mill Ceiling of Section 23 in Counties Where Plaintiff's Reside (See Column 10 of Exhibit D)

County	*Dollars Per Child the County May Assess Under the 10 Mill Ceiling of Section 23*
Alachua	$168
Brevard	153
Broward	355
Collier	412
Columbia	137
Dade	333
Duval	160
Gadsden	67
Gulf	160
Hillsborough	173
Leon	200
Nassau	150
Orange	182
Seminole	155
Volusia	228
Walton	134

This table makes clear the inequality between, for example, Gadsden County and Collier County, but the inequality is even more pronounced if this table is compared with the following table:

TABLE 2

Dollars Per Child Authorized to be Assessed by the 10 Mill Ceiling of Section 23 in Selected Other Counties (See Column 10 of Exhibit D)

County	*Dollars Per Child the County May Assess Under the 10 Mill Ceiling of Section 23*
Charlotte	$725
Citrus	441
Flagler	313
Glades	722
Hendry	337
Highlands	377
Indian River	343
Lee	341
Martin	440
Osceola	369
Palm Beach	461
Sarasota	405

Thus, Gadsden County may tax itself only $67.00 per child while Glades County may tax itself $722.00 per child, over 10 times as much.

The fundamental inequity of authorizing counties to tax themselves on the basis of property values is also revealed in the two following tables which compare the tax base per child in selected counties:

TABLE 3

Tax Base Per Child in Counties Where Plaintiffs Reside
(See Column 12 of Exhibit D)

County	*Dollars of Tax Base*
Alachua	$16,769
Brevard	15,341
Broward	35,503
Collier	41,205
Dade	33,263
Duval	16,005
Gadsden	6,672
Gulf	15,972
Hillsborough	17,318
Nassau	14,951
Orange	18,184
Seminole	15,340
Volusia	22,815
Walton	13,423

TABLE 4

Tax Base Per Child in Selected Other Counties

County	*Dollars of Tax Base*
Charlotte	$72,535
Citrus	44,089
Glades	72,207
Highlands	37,724
Indian River	34,274
Lee	34,128
Martin	44,013
Monroe	35,400
Osceola	26,930
Palm Beach	46,052
Sarasota	40,545

Thus, the state says to the child in Gadsden County that he must be content with a tax base of only $6,672.00 on which to raise additional revenues for his education, while his friend in Glades County has $72,000 worth of property on which to raise money to support his education. There is no rational basis for such a distinction.

16. Section 23, C.68-18 is also void under Article XII, §1 of the Florida Constitution which requires the state to operate a "uniform system of public free schools".[15]

17. Unless defendants are enjoined from withholding the state allocation of MFP funds as a consequence of violating Section 23, the plaintiffs and all others similarly situated will suffer irreparable damage for which they are without adequate remedy at law.

WHEREFORE, plaintiffs pray:

(a) that a three-judge court be convened pursuant to 28 U.S.C. Section 2281;

(b) that the portion of Section 23, C.68-18, which imposes an aggregate 10 mill plus DB&B ceiling on the District and County Millages of any Florida county be declared null and void and of no effect pursuant to the procedure provided in 28 U.S.C. 2201-2202;

(c) that defendants be enjoined from withholding any MFP funds from any county under the terms of Section 23, C.68-18; and

---

[15] Article XII, Section 1 provides:

> The legislature shall provide for a uniform system of public free schools, and shall provide for the liberal maintenance of the same.

Since the time of the filing of the complaint, the Florida Constitution has been amended. The counterpart of Article XII, §1 in the new Constitution is Article IX, §1 which in pertinent part provides:

> "Adequate provision shall be made by law for a uniform system of free public schools . . ."

(d) that the court grant such other and further relief as it may deem just and proper.

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Attorneys for Plaintiffs

EXHIBIT A

PROVISIONAL ESTIMATES

Percent of Florida School Revenue Receipts Derived From Various Sources Anticipated for 1967-68

County	*Percent Federal Sources*	*Percent State-wide Sources*	*Percent Local Sources*
1	2	3	4
Alachua	1.83%	55.66%	42.51%
Baker	4.34	77.02	18.64
Bay	10.19	63.22	26.59
Bradford	3.57	72.13	24.30
Brevard	20.62	32.70	46.68
Broward	.62	39.56	59.82
Calhoun	3.90	75.95	20.15
Charlotte	1.08	36.83	62.09
Citrus	1.41	44.21	54.38
Clay	9.02	61.24	29.74
Collier	1.97	35.67	62.36
Columbia	5.39	62.60	32.01
Dade	9.03	34.51	56.46
DeSoto	.98	58.77	40.25
Dixie	6.45	56.06	37.49
Duval	3.33	47.63	49.04
Escambia	5.89	52.99	41.62
Flagler	1.41	59.66	38.93
Franklin	2.55	79.62	17.83
Gadsden	4.99	70.98	24.03
Gilchrist	2.43	70.86	26.89
Glades	5.07	49.14	45.79
Gulf	3.23	61.25	35.52
Hamilton	2.21	55.69	42.10
Hardee	1.41	60.64	37.95
Hendry	.96	49.92	49.12
Hernando	2.23	49.90	47.87
Highlands	1.76	52.96	45.28

EXHIBIT A Cont'd.

County	*Percent Federal Sources*	*Percent State-wide Sources*	*Percent Local Sources*
1	2	3	4
Hillsborough	2.14	47.91	49.95
Holmes	5.92	77.77	16.31
Indian River	1.56	43.84	54.60
Jackson	2.39	78.83	18.78
Jefferson	4.11	75.54	20.35
Lafayette	3.00	81.07	15.93
Lake	2.56	46.35	51.09
Lee	2.01	44.16	53.83
Leon	1.86	55.51	42.63
Levy	1.43	65.33	33.24
Liberty	5.35	84.47	10.18
Madison	3.32	79.23	17.45
Manatee	1.73	53.15	45.12
Marion	2.65	53.58	43.77
Martin	.54	44.70	54.76
Monroe	14.29	41.00	44.71
Nassau	3.36	58.04	38.33
Okaloosa	20.18	57.78	22.04
Okeechobee	1.73	57.70	38.57
Orange	1.44	48.64	49.92
Osceola	1.40	50.32	48.28
Palm Beach	1.93	33.56	64.49
Pasco	1.65	50.42	47.93
Pinellas	1.86	39.02	59.12
Polk	1.38	47.09	51.53
Putnam	2.16	54.87	42.97
St. Johns	.66	54.26	45.08
St. Lucie	1.89	50.48	47.63
Santa Rosa	8.74	59.14	32.12
Sarasota	.72	41.68	57.60
Seminole	3.08	57.42	39.50
Sumter	1.62	66.56	31.82

EXHIBIT A Cont'd.

County	*Percent Federal Sources*	*Percent State-wide Sources*	*Percent Local Sources*
1	2	3	4
Suwannee	1.78	68.12	30.10
Taylor	1.96	58.33	39.71
Union	2.85	68.28	28.87
Volusia	2.16	40.89	56.95
Wakulla	4.31	80.72	14.97
Walton	9.01	66.70	24.29
Washington	4.13	81.73	14.14
State Average	3.76	57.19	39.02

Source: County budgets on file with the State Department of Education. Compiled by Research Division, Florida Education Association.

EXHIBIT B

Fla. St. Dept. Ed.
Div. of Finance
May 1968

SUMMARY OF ESTIMATED UNITS, 1968-69

(Basis for Computation of Estimated Foundation Program)

_____ County

ESTIMATED INSTRUCTION UNITS:	Total Units
Grades 1-12 (Previous yr.'s basic units 7218 Provision for 1st Grade Units 27 incr. by 5 mos. ADA incr.) 7,245 by 4.02%	7,536.25
Kindergartens	250.00
Exceptional Children	332.00
Vocational: Agricultural Education	12.20
Distributive, Cooperative, & Business Ed.	152.70
Home Economics Education	76.10
Technical and Health Occupations Education	24.50
Industrial Education	200.65
General Adult Education	105.00
Special Teacher Services Maximum 1036.18	1,086.18
Supervisors of Instruction Maximum 98.00	91.00
TOTAL ESTIMATED INSTRUCTION UNITS	9,866.58

EXHIBIT C

PROVISIONAL ESTIMATES

Millage Required to be Levied If Counties Are to Share in the Minimum Foundation Program, and the Actual Millage Levied For Operation of Schools During 1967-68

County	*Millage Required*	*Millage Levied*
Alachua	3.25	13.00
Baker	4.06	9.11
Bay	2.40	7.64
Bradford	3.18	8.918
Brevard	3.16	14.88
Broward	2.07	10.67
Calhoun	1.99	8.00
Charlotte	1.20	7.45
Citrus	1.55	8.6055
Clay	2.59	9.75
Collier	1.67	11.45
Columbia	3.61	11.729
Dade	2.56	12.32
DeSoto	2.46	9.40
Dixie	2.80	14.874
Duval	3.86	15.8963
Escambia	3.00	13.183
Flagler	2.70	7.59
Franklin	1.82	4.40
Gadsden	4.18	15.50
Gilchrist	2.91	9.18
Glades	1.10	5.01
Gulf	2.83	13.30
Hamilton	2.00	13.63
Hardee	2.25	6.00
Hendry	2.54	9.00
Hernando	2.37	12.868
Highlands	2.05	6.50
Hillsborough	3.12	14.206
Holmes	2.96	7.50
Indian River	1.87	8.931
Jackson	3.42	6.20
Jefferson	3.17	8.30
Lafayette	2.30	4.60

EXHIBIT C Cont'd.

County	*Millage Required*	*Millage Levied*
Lake	2.41	10.00
Lee	2.23	9.519
Leon	2.63	11.762
Levy	2.18	7.80
Liberty	2.28	4.00
Madison	5.14	10.34
Manatee	3.02	12.00
Marion	2.24	8.76
Martin	1.72	8.23
Monroe	1.76	7.74
Nassau	3.30	12.42
Okaloosa	2.60	8.439
Okeechobee	2.86	8.25
Orange	3.82	14.80
Osceola	1.42	7.66
Palm Beach	1.76	9.89
Pasco	2.57	11.425
Pinellas	3.52	18.00
Polk	2.93	11.432
Putnam	3.16	14.271
St. Johns	2.58	8.40
St. Lucie	2.45	8.97
Santa Rosa	1.57	7.586
Sarasota	2.08	10.12
Seminole	2.77	12.75
Sumter	3.20	9.92
Suwannee	3.12	9.374
Taylor	2.53	11.6196
Union	3.07	9.63
Volusia	3.11	14.65
Wakulla	2.17	8.44
Walton	3.93	12.00
Washington	2.33	6.50

Source: State Department of Education; and County Finance, State Comptroller

Prepared by FEA—Research, January, 1968

Florida Counties	Total Millage Originally Levied for 1967–69 Biennium	Millage now in Effect: Allowable Under Sec. 23 (Basic)	Millage now in Effect: DB & B	Tax Millage Secured by Basic Effort (Col. 3 less Col. 4)	Mills Lost Through Sec. 23 (Col. 2 less Col. 3)	Assessed Property Value (Col. 3 less Col. 4)	Revenue Lost Through Sec. 23 (Col. 6 × Col. 7)	Revenue Lost Through DB & B (Col. 6 × Col. 4)	Number of Pupils in Average Daily Attendance (ADA)	Amount which Ten Mills Would Raise in County (Col. 7 × 10 Mills)	Amount which Ten Mills Would Raise in County (Col. 8 × 10 Mills)	Foundation Program Cost (Col. 10 × Average Cost per ADA)	Tax Base Per Pupil in ADA: Actual (Col. 7 ÷ Col. 10)	Tax Base Per Pupil in ADA: Adjusted (Col. 8 ÷ Col. 10)
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Alachua*	13.00	10	.6	10.36	2.10	8,251,981	$ 344,754	919.20	$ 8,520	20,872	$ 8,519	$ 20,000,000	$16,709	
Baker	9.11	8.28**			.25	598		105.85	2,448	2,108	120	25,308,322	11,950	
Bay	7.64	6.48**			.312	833		748.73	1,441	15,825	218	330,000,000	21,709	
Bradford	8.918	10.00**			.44	887		184.69	3,843	3,305	52	17,785,300	5,259	
Brevard*	11.88	10	1.29	11.29	3.50	856,564	750,961	2,402.10	8,015	87,000	358	875,707,508	15,341	
Broward*	10.67	10	.24	10.24	.43	3,212,294	1,381,372	3,006.50	8,223	90,153	335	3,242,193,402	35,503	
Calhoun	8.00	8.00**				28,785		104.11	2,068	1,937	150	20,053,350	15,022	
Charlotte	7.45	7.45**				194,138		150.02	15,386	2,758	745	299,050,000	72,535	
Citrus	8.6055	8.36**				211,116		181.30	9,822	3,772	441	122,254,000	41,000	
Clay	9.75	10.00**				311,115		286.07	9,871	6,014	337	45,000,000	13,583	
Collier*	11.45	10	—	10.00	1.45	1,000,000	2,000,838	273.52	9,171	6,154	1,127	253,577,000	217,205	
Columbia*	11.729	10	—	10.00	1.729	1,000,000	1,729,000	475.01	2,730	6,021	167	82,110,344	13,692	
Dade*	12.32	10	.28	10.28	2.04	6,841,000	13,956,487	9,601.58	14,332	68,473	2,928	834,073,228	58,182	
De Soto	9.40	10.8**			.55	1,000,000	550,000	118.84	4,632	3,456	250	51,124,170	22,020	
Dixie*	14.871	10	.8787	10.8787	4.0883	20,000	81,766	37.00	3,136	1,381	148	20,424,361	14,760	
Duval*	15.8003	10	.6724	10.6724	5.2212	7,502,500	39,164,733	4,005.12	111,000	109,000	15,000,205	16,035		
Escambia*	13.183	10		10.00	3.183	719,522	2,290,228	1,048.78	3,622	43,107	104	5,784,104	16,372	
Flagler	7.59	8.43**				36,000		50	1,087	1,188	318	26,816,442	31,211	
Franklin*	4.40*	6.38**				20,000		75.74	6,001	1,501	100	20,000,000	19,505	
Gadsden*	15.50	10	.15	10.15	5.35	71,500	301,578	483.73	1,473	10,735	71,560,572	4,722		
Gilchrist	9.18	10.00**				17,078		48.91	1,038	852	100	17,078,766	20,940	
Glades	5.01	5.02**				37,385		44.39	12,082	705	542	37,404,393	74,207	
Gulf*	13.30	10	.55	10.55	2.571	42,104	114,115	126.78	3,315	2,630	160	42,015,700	15,976	
Hamilton	13.63	9.00**				36,000		103.56	3,525	3,000	121	36,502,233	17,000	
Hardee	6.00	6.20**				90,303		143.80	6,722	3,042	315	96,333,944	31,959	
Hendry	9.00	10.00**				87,205		123.50	7,058	3,589	357	87,205,126	33,742	
Hernando*	12.868	10		10.00	2.868	80,326	247,726	139.73	6,208	3,011	337	80,370,474	17,287	
Highlands	6.50	8.00**				208,867		270.60	7,701	5,538	527	208,500,228	38,518	
Hillsborough*	14.206	10		10.00	4.206	1,534,041	6,950,899	1,196.35	5,704	21,805	175	306,324,350	17,318	
Holmes*	7.50	7.50**				26,197		128.03	2,044	2,306	114	26,182,358	11,057	
Indian River*	8.934	9.13**				200,206		315.28	7,907	6,574	333	239,308,304	38,274	
Jackson*	6.20	6.70**				105,250		308.58	5,589	5,830	151	101,014,827	13,150	
Jefferson*	8.50	9.61**				31,636		123.07	2,571	2,704	118	31,863,052	11,753	
Lafayette	4.40	4.40**				12,000		32.01	1,508	438	14	12,840,000	29,452	

* Counties in which Sec. 23 had reduced 1967–69 millages.

** Counties whose original millages were below 10% are not affected by Sec. 23.

*** 1967–68 figure.

† Exclusive of DB & B.

Note: Calculations are based upon figures supplied by the Florida State Department of Education.

ANALYSIS OF EFFECTS OF SECTION 22 ON LOCAL SCHOOL TAX REVENUE

1	2	3	4	5	6	7	8	9	10	11	12
		Millage now in Effect					Amount which Ten Mill Limit of Sec. 22 Permits County to Collect per Instruction Unit, 1968-69 [Col. 11 times Ten Mills divided by Col. 7]		Amount which Ten Mill Limit of Sec. 22 Permits County to Collect per Child, 1968-69 [Col. 11 divided by Ten Mills divided by Col. 9]		
County	Total Millage Originally Levied for 1967-69 Biennium	Allowable Under Sec. 22 (Excluding "DE & R") (a)	(b)	Total Millage Now in Effect [Col. 2 plus Col. 3b]	Mills Lost Through Sec. 22 [Col. 1 minus Col. 4]	Estimated Revenue Produced by One Mill of Tax 1968-69	Revenue Lost as a Result of Sec. 22 [Col. 5 times Col. 6]	Number of Instruction Units 1967-68 (Pursuant to MFP)	Children in Average Daily Attendance (ADA) 1967-68	Total Assessed Valuation of Nonexempt Property 1968-69	Tax Base per Child in ADA [Col. 11 divided by Col. 9]
Lake	20 00	20 00**				$ 398,821	$	617 10	6,457	$3,231*	391	398,838,555	30,122
Lee	9 249	9 249**				523,200		705 81	7,417	15,310	341	528,518,970	34,128
Leon*	11 292	10	—	10 00	1 292	379,457	868,893	913 86	8,147	18,922	299	379,017,020	29,030
Levy	7 80	7 80**				72,470		140 22	3,171	2,742	264	72,565,423	28,443
Liberty	4 00	4 00**				13,369		43 63	3,087	837	161	13,369,742	16,093
Madison	10 31	10 20**				31,384		176 18	1,791	3,325	89	31,391,030	8,929
Manatee*	12 69	10	26	10 26	1 54	331,938	511,031	709 18	4,306	15,428	215	331,856,543	21,496
Marion	8 20	8 20**				370,457		579 06	5,452	14,498	255	370,212,532	25,535
Martin	8 23	9 00**				291,229		243 60	9,421	4,872	410	291,226,484	44,013
Monroe*	9 71	8 45**				393,245		384 11	7,894	8,306	354	393,235,318	35,100
Nassau*	12 42	10	86	10 86	1 56	77,321	120,933	244 68	3,164	5,168	150	77,239,046	24,951
Okaloosa	8 139	10 00**				243,981		862 09	2,826	21,153	115	243,819,296	11,526
Okeechobee	8 25	10 00**				57,340		108 03	5,315	2,326	247	57,340,306	24,570
Orange*	11 80	10	4	10 4	1 40	1,278,247	3,121,287	3,193 31	4,011	70,265	182	1,278,247,984	18,184
Osceola	7 66					156,870**		192 86	8,134	4,248	309	156,880,620	36,930
Palm Beach	9 80	9 80**				2,377,694		2,489 15	10,356	55,977	161	2,377,844,727	16,942
Pasco*	11 428	10	—	10 00	1 425	194,488	277,145	306 22	5,232	8,145	227	194,508,476	22,558
Pinellas*	15 00	10	85	10 85	7 35	1,371,818	11,552,862	3,129 29	8,922	50,207	224	1,371,821,096	22,336
Polk	11 432	8 132**				1,233,622		2,317 29	8,324	49,331	218	1,233,622,553	21,736
Putnam*	14 271	10	1 17	11 17	2 901	133,203	373,102	400 78	3,324	8,173	157	133,203,210	15,721
St. Johns	8 99	8 20**				170,828		293 87	6,018	5,018	152	170,828,779	28,245
St. Lucie	8 97	8 97**				279,491		450 21	6,206	10,139	225	279,491,676	27,512
Santa Rosa	7 546	8 20**				173,830		300 23	4,822	7,822	222	173,830,831	22,204
Sarasota	10 12	10 15**				639,733		754 10	8,555	15,911	405	645,118,854	40,515
Seminole*	12 75	10	10	10 44	2 31	250,132	328,408	715 79	3,499	16,115	155	250,[illegible]215	15,510
Sumter*	9 92	10 00**				49,067		186 28	6,825	3,138	190	49,771,776	19,000
Suwannee	8 374	8 374**				83,855		201 28	5,127	3,960	161	82,918,896	16,141
Taylor*	11 6296	10	2293	10 2293	1 3963	69,852	91,788	173 94	4,993	3,574	1982	69,621,299	19,480
Union	9 62	9 62**	6			15,227		37 05	2,672	1,191	128	15,243,436	12,799
Volusia*	14 65	10	8084	10 8084	3 7584	656,395	2,848,261	1,314 78	5,107	29,218	228	671,181,300	22,815
Wakulla	8 31	9 00**				15,009		29 98	2,030	1,206	111	14,448,889	11,013
Walton*	12 00	10	—	10 00	2 00	31,858***	63,656	178 63	2,883	3,837	134	51,305,652	13,423
Washington	8 20	9 00**				33,913		158 03	2,146	2,782	122	33,909,297	12,189

* Counties to which Sec. 22 had reduced 1967-69 millages.
** Counties whose original millages were below ten are not affected by Sec. 22.
*** 1967-68 figure.
† Exclusive of DE & R.
Note: Calculations are based upon figures supplied by the Florida State Department of Education.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF FLORIDA

ROBERT H. HARGRAVE, et al., Plaintiffs,	)	CIVIL
vs.	)	ACTION
GOVERNOR CLAUDE R. KIRK, JR., et al.,	)	FILE NO. 68-463T
Defendants.	)	

ANSWER TO AMENDED COMPLAINT

Come now the Defendants and for answer to the Amended Complaint filed in this cause say;

1. They admit the allegations of paragraphs 1, 2 and 3 of said Amended Complaint.

2. They admit the allegations of paragraph 4 of said Amended Complaint, except that they deny that Ray C. Osborne is either Governor of the State of Florida or a member of the Cabinet of the State of Florida or a member of the State Board of Education and they deny that the State Board of Education regulates the amount of Minimum Foundation Program funds which shall be paid to county boards of public instruction, such amount being established by statutory formula.

3. They admit the allegations of paragraph 5, except that they allege that funds from state wide taxes are appropriated annually rather than biennially as alleged.

4. They admit that the allegations of paragraph 6 allege the constitutional framework of the State of Florida as it existed at the time suit was filed, but allege that the Constitution of the State of Florida was revised, effective January 7, 1969, and that because of said revision they deny the allegations contained in said paragraph 6.

5. They admit the allegations of paragraph 7.

6. They admit the allegations of paragraph 8, except as to the constitutional limitations specifically cited in paragraph 6 of said Amended Complaint.

7. They admit the allegations of paragraph 9 of said Amended Complaint, except that they deny that the Instruction Unit is enforced in transportation and they allege that the sum $550 set forth in line 3, on page 8, should read $500.

8. They admit the allegations of paragraphs 10 and 11.

9. They admit the allegations of paragraph 12, except that they deny the third sentence thereof beginning with the words "See Exhibit C."

10. They admit the allegations of paragraph 13, except the allegation in footnote 13, "This situation occurred only in Pinellas County, however," which said allegation is denied.

11. They deny the allegations of paragraphs 14, 15, 16 and 17.

RIVERS BUFORD, JR.
General Counsel
State Board of Education
Room 105, The Capitol
Tallahassee, Florida 32304

[Certificate of service omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT H. HARGRAVE, et al.,)
Plaintiffs,)
v.) No. 68-463
) Civ.T.
GOVERNOR CLAUDE R. KIRK, JR.,)
et al.,)
Defendants.)

AFFIDAVIT OF HERSHEL SHANKS

Hershel Shanks, having been duly sworn, hereby states as follows:

1. That he is one of the counsel for plaintiffs in this cause.

2. That, on information and belief, the copy of the memorandum of Floyd T. Christian, dated January 6, 1969, attached hereto and marked Exhibit 1, is a true and correct copy thereof.

3. That, on information and belief, the letter of Ralph N. Staten, Superintendent of Schools of Broward County, dated August 15, 1969 and addressed to Defendant Floyd T. Christian, State Superintendent of Education, attached hereto and marked Exhibit 2, is a true and correct copy thereof.

4. That, on information and belief, the letter of Defendant Floyd T. Christian, State Superintendent of Education, dated August 19, 1969 and addressed to Mr. Ralph N. Staten, Superintendent of Schools, Broward County, attached hereto and marked Exhibit 3, is a true and correct copy thereof.

Hershel Shanks

[Subscription omitted in printing]

EXHIBIT "1"

AD VALOREM TAX MILLAGE FOR SUPPORT AND OPERATION OF PUBLIC SCHOOLS

by

Floyd T. Christian

January 6, 1969

1968-69 Status Report:

All sixty-seven counties now operate under the ten-mill ceiling plus certain additional millage levies as provided in the exceptions enumerated in Chapter 68-18, Florida Statutes.

The following counties have enforced millage reductions in 1968-69:

County	*1967-68 Operating Millage*	*1968-69 Operating Millage*	*Enforced Millage Decrease*	*Approximate Dollar Reduction*
Alachua	13.00	10.60	2.40	$ 802,517
Brevard	14.88	11.29	3.59	2,921,310
Broward	10.67	10.24	.43	1,312,304
Collier	11.45	10.00	—0—*	
Columbia	11.729	10.00	1.729	135,953
Dade	12.32	10.28	2.04	12,812,703
Dixie	14.874	10.8737	4.0003	77,867
Duval	15.8963	10.6701	5.2262	8,899,894
Escambia	13.183	10.00	—0—*	
Gadsden	15.50	10.45	5.05	343,313
Gulf	13.30	10.59	2.71	108,410
Hernando	12.868	10.00	2.868	235,342
Hillsborough	14.206	10.00	4.206	6,609,052
Leon	11.762	10.00	1.762	635,173
Manatee	12.00	10.46	1.54	485,479
Nassau	12.42	10.86	1.56	114,887
Orange	14.80	10.40	4.40	5,343,076
Pasco	11.425	10.00	1.425	263,289
Pinellas	17.00	10.65	6.35	9,481,993

Putnam	14.271	11.47	2.801	354,447
Seminole	12.75	10.44	2.31	549,573
Taylor	11.6196	10.2593	1.3603	90,050
Volusia	14.65	10.8936	3.7564	2,449,349
Walton	12.00	11.00	1.00	48,930
				$54,074,911

*Freeholders voted zero district millage for 1968-69 and 1969-70.

In all cases the major portion of the dollar impact of the enforced millage reduction is being absorbed from the Education Improvement Expense Fund allocation.

The following counties are at, or very near, the ten-mill limit in 1968-69. (No enforced millage reduction for 1968-69)

County	*1968-69 Operating Millage*
Bradford	10.00
Clay	10.00
De Soto	10.80
Gilchrist	10.00
Hamilton	9.00
Hendry	9.00
Indian River	9.131
Jefferson	9.61
Lake	10.00
Lee	9.50
Madison	10.50
Martin	9.00
Okaloosa	10.00
Okeechobee	10.00
Palm Beach	9.89
Sarasota	10.15
Sumter	10.00
Suwannee	9.374
Union	9.63
Wakulla	9.00
Washington	9.00

In almost all cases these counties will be put in the position of eroding the Education Improvement Expense Fund allocation in 1969-70.

Recommendation:

1. Allow the school boards to levy the full ten mills as authorized under current law.
2. Allow the school boards to levy up to the amount of millage which has been voted by the freeholders.

Rationale:

1. The effect of the ten-mill limitation creates a restriction on the amount of local support which certain counties can provide for the educational program.
2. The expression of the freeholders in the local millage election is being negated in those cases where there is a desire to provide a greater amount of local support for the educational program.
3. The use of the Education Improvement Expense Fund to absorb part of the enforced millage rollback has the net effect of destroying the effectiveness of this new dimension in education support and planning. In 1969-70, if the Minimum Foundation Program is funded at the current level of state support, the inverse effectiveness of the Education Improvement Expense Fund will be further demonstrated.
4. Effective July, 1969 the local required effort for the Minimum Foundation Program will be a three-mill levy on the non-exempt assessed valuation in the several counties. There will be some shifting of the required effort and in certain counties this will further restrict the state allocation to these counties.
5. The funding of retirement matching at $500 per

instruction unit will require about $12,000,000 from local funds in order to finance this program during 1968-69. Salary increases in 1969-70 will require the use of additional local funds for retirement matching and in effect will deny the counties the use of these dollars for the education of children.

EXHIBIT "2"

THE BOARD OF PUBLIC INSTRUCTION
OF BROWARD COUNTY, FLORIDA
1320 S.W 4th Street
Fort Lauderdale, Florida
PO Box No. 8369
33310

August 15, 1969

Mr. Floyd T. Christian,
Commissioner of Education,
State Department of Education,
Tallahassee, Florida 32304

Dear Mr. Christian;

The Board of Public Instruction of Broward County, meeting in regular session on August 14th, passed a resolution stating that the Board can not balance its budget for the 1969-70 school year without exceeding the 10-mill cap imposed by the last legislature.

It is impossible for us to submit a budget unless your office agrees that we may include millage funds exceeding 10 mills. Will you please advise us immediately whether or not a budget prepared which includes funds exceeding 10 mills will be accepted by your office?

Respectfully,

Ralph N. Staten, Superintendent.

EXHIBIT "3"

STATE OF FLORIDA
DEPARTMENT OF EDUCATION
Tallahassee 32304
August 19, 1969

Mr. Ralph N. Staten
Superintendent of Schools
Broward County
Post Office Box 8369
Fort Lauderdale, Florida 33310

Dear Superintendent Staten:

In response to your letter of August 15 in which you presented the dilemma the District School Board in Broward County faces in developing an adequate school budget for 1969-70 in light of the limitations of the 10-mill cap, the following information is submitted.

The responsibilities of this office in executing the statutes currently in existence would not permit a budget to be officially approved which included a levy of ad valorem tax in excess of those levies authorized in Section 236.251, Florida Statutes. Therefore, the Annual School Budget for 1969-70 must be developed to comply with this restriction if the district is to continue participation in the Minimum Foundation Program for Kindergarten and Grades 1-12.

I recognize the severe financial difficulties which have resulted from recently enacted statutory provisions, however, there were no alternatives or discretionary authori-

ties provided this office in administering the state and local funds for support of public schools.

Sincerely,

Eloyd T. Christian
FTC:MJ
cc: Mr. Herman O. Myers

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF FLORIDA

CIVIL ACTION FILE NO. 68-463T

ROBERT H. HARGRAVE, et al.,
Plaintiffs

vs.

GOVERNOR CLAUDE R. KIRK, JR., et al.,
Defendants.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW the plaintiffs, by their attorneys, and move the Court for an order granting summary judgment in their favor, on the ground that "there is no genuine issue as to any material fact" and plaintiffs are "entitled to a judgment as a matter of law." Rule 56(c), F.R. Civ. P.

A detailed statement of the facts on which this motion is based and the legal reasons therefore are contained in an accompanying brief.

Respectfully submitted,

GLASSIE, PEWETT, BEEBE & SHANKS
By

Hershel Shanks
Allan I. Mendelsohn
Robert M. Perce, Jr.
Federal Bar Building West
1819 H Street, N. W.
Washington, D.C. 20006

Richard Frank
Suite 918
Marine Bank Building
Tampa, Florida

Attorneys for Plaintiffs

Of Counsel:

David Rubin
1201 Sixteenth Street, N.W.
Washington, D.C. 20036

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF FLORIDA

ROBERT H. HARGRAVE, et al.,	)	
Plaintiffs,	)	
vs.	)	CIVIL AC-
GOVERNOR CLAUD R. KIRK, JR.,	)	TION FILE
et al.,	)	NO. 68-463T
Defendants.	)	

AFFIDAVIT OF LEE YOUNG

Lee Young, having been duly sworn, hereby states as follows:

1. That he is presently Business Manager of Tallahassee Junior College, 444 Appleyard Drive, Tallahassee, Florida 32304; that during the period 1968-1969 he held the position of Specialist in Finance and Salary with the Florida Education Association, 208 W. Pensacola Street, Tallahassee, Florida 32304; that during the period 1955 to 1968 he was Director of County Records and Reports for the State Department of Education, Tallahassee, Florida.

2. That, on information and belief, the facts set forth in Paragraphs 3 through 15 of the Amended Complaint are true and correct; as are the facts set forth in Paragraphs A, B and C of the Statement of the Case contained in the Brief in Support of Plaintiffs' Motion for Summary Judgment and in Exhibits 4 and 5 to this Affidavit; except for the fact that Ray C. Osborne is a member of neither the Cabinet nor the State Board of Education.

3. That, on information and belief, the following additional facts are true and correct:

The process by which the counties budget and allot all funds available for education is prescribed by statute (F.S.

237.05-237.24) and is uniform throughout the state. It begins on or before June 15th of each year, when the State Commissioner of Education certifies to each county school superintendent the estimated number of instruction units upon which state funds shall be allotted to his county in the coming school year. (F.S.A. §237.07).

The next step occurs in early July when the county tax assessor certifies to the school superintendent his estimate of the total value of taxable property which is expected to be assessed on the current year's tax roll. (F.S.A. §§193.25, 237.08). Armed with the information supplied by these two sources, plus his own knowledge of his school system's needs, the superintendent then prepares and submits to his local school board a tentative budget and an estimate of the tax levies needed to fund the budget during the next school year. (F.S.A. §§237.09, 237.10). This must be done by July 15th of each year. (F.S.A. §237.09).

The local board then reviews, modifies, and tentatively approves a budget and County Millage levy, based on the superintendent's submission. (F.S.A. §§237.11, 237.12). This budget and the tentative County Millage levy are then published and a public hearing held upon them during the next-to-last week in July. (F.S.A. §237.12). By August 1st the local board must approve a budget and submit it to the State Commissioner. (F.S.A. §237.12).

Within 30 days the State Commissioner must examine the budget, direct or suggest any changes deemed necessary or desirable, and certify that the budget is satisfactory and has become official. (F.S.A. §§237.14-237.18). When this certification is accomplished, and when the final assessment of taxable property is certified by the tax assessor, the local board proceeds with the levying of taxes.

The local board then sets forth in a resolution the

amounts necessary to be raised from local taxes, the County Millage to be levied, the amount of District Millage which the voters have authorized, the amount of District Millage which is actually to be levied,[1] and directions to the tax assessor that he apply the approved millages to the taxable property within the county. (F.S.A. §237.18(1)).

Thereafter the taxes are calculated and collected in accordance with the applicable statutes. (F.S.A. §§193.30, 193.35, 193.39, 237.18(2), (3), (4)). All taxes are due and payable on November 1st of each year (F.S.A. §193.41), and become delinquent in April of the succeeding year (*Id.*). Discounts for early payment are allowed as follows: November, 4%; December, 3%; January, 2%; February 1%; thereafter, none. (*Id.*)

Lee Young

[Subscription omitted in printing]

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[1] Where school boards have not in the past chosen to levy millage up to their full aggregate authority (*i.e.*, up to the combined amount of County and authorized District Millages), they have levied more heavily from County Millage than District. This is due to the fact that the tax collectors are paid commissions on County levies from general county funds. When collecting District levies, however, the tax collector is paid his commission only from the proceeds of that levy. (F.S.A. §193.65)

	1	2	3	4	5	6	7	7a	7b	8	9	10
	District Millage Levied 1967-68	District Millage Levied 1968-69	County Millage Levied 1967-68	County Millage Levied 1968-69	Total Millage Levied 1967-68	Total Millage Levied 1968-69	Total Millage Authorized 1968-69 by Sec. 24			Decrease in Millage Levied from 1967-68 to 1968-69 (Col. 3 Minus Col. 7c)	Estimated Revenue Produced by 1 Mill 1968-69	Revenue Lost 1968-1969 As Result of Sec. 24
							Basic	DB&B	Total**			
Alachua*	$ 3.00	$ .60	$10.00	$10.00	$13.00	$10.6	$10.00	$ .6	$10.6	$(2.40)***	$ 331,981	$ 844,734
Baker	6.00		3.11	8.23	9.11	8.23	10.00				23,908	
Bay	2.70		4.94	6.44	7.64	6.4	10.00				342,333	
Bradford	3.00		7.918	10.00	8.918	10.0	10.00				44,333	
Brevard*	6.29	1.29	8.39	10.00	14.88	11.29	10.00	1.29	11.29	(3.39)***	836,363	3,073,961
Broward*	2.00	.24	8.67	10.00	10.67	10.24	10.00	.24	10.24	(.43)***	3,212,494	1,381,372
Calhoun	4.70		3.30	8.00	8.00	8.00	10.00				28,733	
Charlotte	0		7.45	7.45	7.45	7.45	10.00				194,186	
Citrus	1.3653	3.76	1.24	4.60	8.6053	8.36	10.00				122,118	
Clay	5.70	3.67	4.05	7.33	9.75	10.00	10.00				92,046	
Collier*	1.45	.375	10.00	10.00	11.45	10.00	10.00		10.00	(1.43)***	233,693	367,858
Columbia*	8.729	.28	3.253	10.00	12.104	10.373	10.00	0.373	10.373	(1.729)***	82,769	143,108
Dade*	3.00	.80	7.32	10.00	12.32	10.28	10.00	.28	10.28	(2.04)***	6,611,392	13,487,056
De Soto	6.10	3.8737	3.30	10.00	9.40	10.8	10.00	.8			34,830	
Dixie*	10.00	7.6701	1.874	7.00	14.874	10.8737	10.00	.8737	10.8737	(4.0993)***	29,489	81,962
Duval*	10.00		5.8963	3.00	15.8963	10.6701	10.00	.6701	10.6701	(5.2262)***	1,792,566	9,368,308
Escambia*	6.00	1.30	7.183	10.00	13.183	10.00	10.00		10.00	(3.183)***	710,322	2,261,392
Flagler	4.39	2.00	3.00	3.84	7.39	8.43	10.00				36,498	
Franklin	1.00	.45	3.10	4.30	4.10	6.3	10.00				30,441	
Gadsden*	10.00	5.00	3.30	10.00	13.30	10.43	10.00	.43	10.43	(3.03)***	71,360	361,378
Gilchrist	4.39		4.30	5.00	9.48	10.00	10.00				17,078	
Glades	2.01	7.00	3.00	5.02	5.01	5.02	10.00				37,383	
Gulf*	10.00	5.00	3.39	3.39	13.39	10.39	10.00	.39	10.39	(2.71)***	42,109	114,113
Hamilton	10.00	3.10	3.63	4.00	13.63	9.0	10.00				36,689	
Hardee	3.00		3.00	3.10	6.00	6.2	10.00				96,333	
Hendry	5.37		3.63	3.00	9.00	9.0	10.00				82,205	
Hernando	8.464		4.404	10.00	12.868	10.00	10.00		10.00	(2.868)***	86,376	247,726
Highlands	3.20	1.70	3.30	3.30	6.50	8.00	10.00				208,867	
Hillsborough	10.00		4.206	10.00	14.206	10.00	10.00		10.00	(4.206)***	1,634,041	6,936,896
Holmes	4.30		3.00	6.30	7.30	7.30	10.00				26,167	

Indian River	3.742	1.00	3.189	5.731	8.931	9.131	10.00					249,306	
Jackson	3.20		3.00	6.70	6.20	6.7	10.00					103,040	
Jefferson	5.00		3.30	9.61	8.30	9.61	10.00					31,636	
Lafayette	1.30		3.30	4.60	4.60	4.60	10.00					14,847	
Lake	2.50		7.30	10.00	10.00	10.00	10.00					398,341	
Lee	4.490		5.029	9.50	9.519	9.50	10.00					523,500	
Leon*	6.00		5.762	10.00	11.762	10.00	10.00		10.00	(1.762)***		379,457	668,603
Levy	4.50		3.30	7.80	7.80	7.80	10.00					72,470	
Liberty	.70		3.30	4.00	4.00	4.00	10.00					13,469	
Madison	5.94	.50	4.40	10.00	10.34	10.50	10.00	.50				31,384	
Manatee*	2.00	.46	10.00	10.00	12.00	10.46	10.00	.46	10.46	(1.54)***		331,838	511,031
Marion	5.76	5.7	3.00	3.00	8.76	8.7	10.00					370,137	
Martin	1.698	1.00	6.532	8.00	8.23	9.00	10.00					201,226	
Monroe	4.10	1.50	3.64	6.95	7.74	8.45	10.00					305,245	
Nassau*	5.00	.86	7.42	10.00	12.42	10.86	10.00	.86	10.86	(1.56)***		77,521	120,933
Okaloosa	4.00		4.439	10.00	8.439	10.00	10.00					243,981	
Okeechobee	4.95		3.30	10.00	8.25	10.00	10.00					37,380	
Orange*	6.00	.40	8.80	10.00	14.80	10.4	10.00	.4				1,278,247	3,624,287
Osceola	2.00	1.97	5.66	5.37	7.66	7.34	10.00					195,825	
Palm Beach	4.47	4.47	5.42	5.42	9.89	9.89	10.00					2,577,681	
Pasco*	6.75		4.675	10.00	11.425	10.00	10.00		10.00	(1.425)***		194,488	277,143
Pinellas*	7.00	.63	10.00	10.00	17.00	10.63	10.00	.63	10.63	(6.35)***		1,571,818	11,352,862
Polk	3.00		8.432	8.975	11.432	8.975	10.00					1,233,622	
Putnam*	8.926	1.47	5.345	10.00	14.271	11.47	10.00	1.47	11.47	(2.801)***		133,203	373,102
St. Johns	1.00	1.00	7.40	7.30	8.40	8.3	10.00					170,823	
St. Lucie	0		8.97	8.97	8.97	8.97	10.00					279,491	
Santa Rosa	4.286		5.30	5.30	7.586	5.3	10.00					173,680	
Sarasota	4.00	.37	6.12	9.78	10.12	10.15	10.00	.15				639,735	
Seminole*	6.00	.44	6.75	10.00	12.75	10.44	10.00	.44	10.44	(2.31)***		250,432	378,498
Sumter	.06		8.86	10.00	9.92	10.00	10.00					60,067	
Suwannee	6.00		3.374	9.374	9.374	9.374	10.00					63,085	
Taylor*	8.07393	.2393	3.5403	10.00	11.6196	10.2393	10.00	.2393	10.2393	(1.3603)***		69,682	94,788
Union	6.00		3.63	9.63	9.63	9.63	10.00					15,227	
Volusia*	10.00	.8936	4.65	10.00	14.65	10.8936	10.00	.8936	10.8936	(3.7364)***		686,365	2,378,261
Wakulla	3.00		3.44	9.00	8.44	9.00	10.00					15,008	
Walton*	8.18	6.00	3.82	5.00	12.00	11.00	10.00	1.00	11.00	(1.00)***		51,303	51,303
Washington	3.20	3.20	3.30	5.80	6.50	9.00	10.00					33,913	

* Counties in which Sec. 23 reduced millages authorized for 1967-69.
** Counties with total authorized millages below 10 are not affected by Sec. 23.
*** Indicates reduction to come within Sec. 23 limit.

	1 Average Daily Attendance 1968–69	2 Tax Base (Total Assessed Valuation of Non-Exempt Property) 1968–69	3 Tax Base Per Child in ADA 1968–69	4 Total Amount Per Child Collectible Under Sec. 24
Alachua	20,554	$ 350,000,000	$17,028	$170.28
Baker	2,304	25,908,322	11,245	112.45
Bay	16,503	340,000,000	20,602	206.02
Bradford	3,584	17,785,300	4,962	49.62
Brevard	58,599	875,797,538	14,946	149.46
Broward	96,592	3,212,494,402	33,258	332.58
Calhoun	1,945	29,053,390	14,937	149.37
Charlotte	3,104	200,050,900	64,449	644.49
Citrus	2,915	122,214,096	41,926	419.26
Clay	7,395	91,936,968	12,432	124.32
Collier	6,665	253,577,000	38,046	380.46
Columbia	6,133	82,449,344	13,444	134.44
Dade	216,381	6,598,065,223	30,493	304.93
De Soto	2,496	54,124,170	21,684	216.84
Dixie	1,437	20,424,161	14,213	142.13
Duval	112,847	1,792,566,203	15,885	158.85
Escambia	43,738	705,784,104	16,137	161.37
Flagler	1,146	36,516,428	31,864	318.64
Franklin	1,567	30,000,000	19,145	191.45
Gadsden	10,285	71,560,872	6,958	69.58
Gilchrist	849	17,078,766	20,116	201.16
Glades	815	57,404,893	70,435	704.35
Gulf	2,660	42,015,700	15,795	157.95
Hamilton	2,091	36,597,253	17,502	175.02
Hardee	3,017	96,333,044	31,930	319.30
Hendry	2,742	87,205,126	31,803	318.03
Hernando	3,152	86,376,774	27,404	274.04
Highlands	5,693	208,690,228	36,657	366.57
Hillsborough	92,410	1,556,329,556	16,842	168.42
Holmes	2,470	26,182,558	10,600	106.00
Indian River	7,530	249,306,934	33,108	331.08
Jackson	7,908	101,614,827	12,853	128.53
Jefferson	2,712	31,663,022	11,675	116.75
Lafayette	667	14,847,727	22,260	222.60
Lake	13,735	398,638,555	29,024	290.24
Lee	17,092	528,518,670	30,792	307.92
Leon	18,306	379,017,020	20,705	207.05
Levy	3,051	72,505,423	23,764	237.64
Liberty	848	13,469,742	15,884	158.84
Madison	3,528	31,561,030	8,946	89.46
Manatee	15,737	331,858,543	21,088	210.88
Marion	14,767	370,212,532	25,070	250.70
Martin	4,852	201,226,484	41,473	414.73
Monroe	9,330	303,235,318	32,501	325.01
Nassau	5,462	77,239,046	14,141	141.41
Okaloosa	24,270	243,819,296	10,046	100.46
Okeechobee	2,484	57,380,306	23,100	231.00
Orange	72,694	1,278,247,984	17,584	175.84
Osceola	4,501	156,880,690	34,851	348.51
Palm Beach	58,678	2,577,844,727	43,932	439.32
Pasco	9,202	191,608,476	20,822	208.22
Pinellas	73,810	1,571,621,096	21,293	212.93
Polk	49,778	1,233,622,953	24,782	247.82
Putnam	8,962	133,203,210	14,863	148.63
St. Johns	6,330	170,828,779	26,987	269.87
St. Lucie	10,362	279,491,676	26,973	269.73
Santa Rosa	8,265	173,680,831	21,014	210.14
Sarasota	19,604	645,118,854	38,853	388.53
Seminole	16,677	250,432,215	15,017	150.17
Sumter	3,499	59,771,776	18,685	186.85
Suwannee	3,887	62,948,896	16,195	161.95
Taylor	3,707	69,621,299	18,781	187.81
Union	1,214	15,243,436	12,556	125.56
Volusia	30,416	671,181,500	22,067	220.67
Wakulla	1,464	14,448,880	9,869	98.69
Walton	3,728	51,505,652	13,816	138.16
Washington	2,754	33,999,207	12,313	123.13

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
CIVIL ACTION FILE NO. 68-463T

ROBERT H. HARGRAVE, et al.,)
Plaintiffs,)

v.)

GOVERNOR CLAUDE R. KIRK, JR.,)
et al.,)
Defendants.)

MOTION FOR SUMMARY JUDGMENT

Come now the Defendants, by their attorney, and move the court for an order granting a Summary Judgment in their favor on the ground that there is no genuine issue as to any material fact and the Defendants are entitled to a judgment as a matter of law.

Respectfully submitted,

RIVERS BUFORD, JR.
General Counsel
State Board of Education
The Capitol, Suite 105
Tallahassee, Florida 32304

[Certificate of service omitted in printing.]

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA
No. 68-463-Civ.-T

ROBERT H. HARGRAVE, et al.,)
Plaintiffs,)

vs.)

GOVERNOR CLAUDE R. KIRK, JR.,)
et al.,)
Defendants.)

Before DYER, Circuit Judge, LIEB, Chief District Judge, and KRENTZMAN, District Judge.

DYER, Circuit Judge:

Plaintiffs[1] by this class action attack, under the Equal Protection Clause of the Fourteenth Amendment, the constitutionality of Section 23, Chapter 68-18 Florida Laws, enacted at the Extraordinary Session of 1968 of the Florida Legislature, F.S.A. § 236.251,[2] commonly referred to as the "Millage Rollback Act," which provides that any county that imposes on itself more than ten mills in *ad valorem* property taxes for educational purposes will not be eligible to receive state minimum foundation program (MFP) funds for the support of its public education system.

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[1] Each of the plaintiffs is a citizen of Florida and a resident of one of sixteen counties, and is either a freeholder parent or student in the public schools of Florida.

[2] The statute provides in pertinent part:

> Effective July 1, 1968, each county board of public instruction desiring to participate in the minimum foundation program for kindergartens and grades one through twelve shall levy no more than ten mills of tax on the non-exempt assessed valuation of the county, exclusive of voted district building and bus, required debt service, and the millage required for junior college minimum effort.

Plaintiffs seek to enjoin the defendants[3] from enforcing the statute.

A single District Judge dismissed the suit. The Court of Appeals reversed the District Court's jurisdictional rulings and concluded that the complaint presented a substantial constitutional question. It remanded with directions to convene a three-judge District Court. *Hargrave v. McKinney*, 5 Cir. 1969, 413 F.2d 320. After answer was filed both parties moved for Summary Judgment on the ground that there was no issue of material fact. We agree that the case is ripe for decision.

Florida's public schools are financially supported by statewide and local taxation. Minimum Foundation Program (MFP) funds are appropriated by the state and distributed to the counties in accordance with certain indices of the educational needs of a particular county. This program is not under attack. By its calculations the MFP determines the cost of funding a minimal education system in a county. From this total cost there is deducted a certain minimum amount which each county must raise itself if it desires to receive state MFP funds. The difference is the amount of MFP funds which the state appropriates to the County.

The other source of funds for the support of public education is derived from local taxation. Local taxes are of two kinds. The first, known as County Millage, is imposed by the School Board. It cannot exceed ten mills. Fla. Const. (1968 Revision), art. VII, § 9. The second, known as District Millage, must be authorized by a vote of the freeholders and then may be imposed by the School Board. *Ibid.* Additionally the Federal Government contributes about two or three percent to public education in Florida.

[3] The defendants constitute the membership of the State Board of Education and others who regulate the amount of state MFP funds which is paid to the County Boards of Education.

Under the Millage Rollback Act the District and County Millages cannot exceed in the aggregate ten mills, plus the millage necessary to provide district building and bus funds, funds for debt service and funds for junior college support. These latter funds are not involved in, nor are they material to, a determination of this case.

Prior to the passage of the Millage Rollback Act, the voters in 24 counties had authorized their School Boards, for the school years 1967-1968, 1968-1969, to impose District Millage in addition to the ten mills of County Millage which could be imposed by the Board without voter authorization. With the passage of the Act each of these 24 counties rolled back its millage to the ten mill limit for the 1968-1969 school year to avoid losing state MFP funds. The result was to reduce the amount of money derived from local taxes for educational purposes which counties could raise for themselves. Measured by the reduction in millage from the year before the Act was passed the loss exceeded $50,000,000.00. See Appendix.

The plaintiffs contend that the Millage Rollback Act violates the Equal Protection Clause of the Fourteenth Amendment because the limitation is fixed by reference to a standard which relates solely to the amount of property in the County, not to the educational needs of the county. The plaintiffs argue that the Act promotes no compelling state interest, and is arbitrary and unreasonable because it fails to provide Florida children with an economically equal educational opportunity.

The defendants counter by contending that the difference in the dollars available does not necessarily produce a difference in the quality of education; that the relief sought cannot remedy the evil alleged; that the Act does not constitute a blanket prohibition against a county levying additional *ad valorem* taxes because it may choose to do so and forego its MFP funds; and finally, that on the principle of

comity we should abstain from considering the case in deference to a state court proceeding, filed subsequent to this suit, attacking the validity of the Millage Rollback Act.

We take up defendant's last argument first. We find no special circumstances in this case that would persuade us to apply the doctrine of abstention. The fact that a state remedy is available is not a valid basis for federal court abstention. *Monroe v. Pape*, 1961, 365 U.S. 167, 183, 81 S.Ct. 473, 5 L.Ed. 2d 492; *McNeese v. Board of Education*, 1963, 373 U.S. 668, 671, 88 S.Ct. 1433, 10 L.Ed.2d 622; *Zwickler v. Koota*, 1967, 389 U.S. 241, 251, 88 S.Ct. 391, 19 L.Ed.2d 444. There can be no doubt in this case about what the statute means. It defies any interpretation that would or could avoid or modify the constitutional question. In such a case it is the duty of a federal court to exercise its jurisdiction. *Zwickler v. Koota, supra; Harman v. Forssenius*, 1965, 380 U.S. 528, 534-535, 85 S.Ct. 1177, 14 L.Ed.2d 50; *cf. Reetz v. Bozanick*, 1970, ___ U.S. ___ (No. 185, October Term, 1969, Fed. 25, 1970); *Wright v. City of Montgomery, Alabama*, 5 Cir. 1969, 406 F.2d 867, 871, *cert. granted*, 38 LW 3035. Nor does the fact that the instant case involves a state tax scheme bring it within the proscription of 28 U.S.C.A. § 1341 or the abstention doctrine of *Great Lakes Dredge & Dry Dock Co. v. Huffman*, 1943, 319 U.S. 293, 63 S.Ct. 1070, 87 L.Ed. 1407. Section 1341 prohibits federal courts from enjoining the assessment, levy or collection of any tax under state law where the state law provides an efficient remedy; *Great Lakes* requires abstention where only declaratory relief is sought with regard to a state statute relating to the assessment, levy or collection of taxes. The considerations underlying Section 1341 and the *Great Lakes* abstention doctrine are inapplicable here because the plaintiffs in the instant case are not attempting to strike down an assessment and collection scheme but, on the contrary, are attempting to obtain the right to have such a scheme.

Turning now to the defenses asserted, it may be that in the abstract "the difference in dollars available does not necessarily produce a difference in the quality of education." But this abstract statement must give way to proof to the contrary in this case. For example, with the enforced millage reduction in 1968-1969, the approximate dollar reduction in Broward County alone exceeded $1,300,000. As a result of this, the Board of Public Instruction of Broward County informed the State Superintendent of Schools that it could not balance its budget for the 1969-1970 school year without exceeding the ten mill limit. Furthermore, the unreality of the defendant's contention is pointed up by the wide disparities which the Millage Rollback Act creates. For example, Charlotte County by using the ten mill limit may raise, by its own taxes, $725 per student, while Bradford County, also using the ten mill limit, can raise only $52 per student. What apparently is arcane to the defendants is lucid to us—that the Act prevents the poor counties from providing *from their own taxes* the same support for public education which the wealthy counties are able to provide.

The argument that the relief sought cannot remedy the evil alleged gives us little pause. First it does not meet the constitutional issue under the Equal Protection Clause. Second, the proven facts simply contradict the possibility posed by the defendants that School Boards will not choose to levy taxes in excess of ten mills.

The defendants finally urge that the counties are not prohibited from levying *ad valorem* taxes in excess of ten mills because they may choose to do so and forego their MFP funds. This fact, in defendants' view avoids the constitutional issue. We disagree. The State may not grant a benefit subject to a condition which violates the equal protection clause. *See, Sherbert v. Verner*, 1963, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965; *Keyishian v. Board of Re-*

gents of New York, 1967, 385 U.S. 589, 605-6, 87 S.Ct. 675, 17 L.Ed.2d 629.

The disposition of the defendants' contentions does not dispose of the case. We cannot circumnavigate the issue squarely presented by the plaintiffs, *i.e.*, does the Act which imposes a ten mill limit on the authority of the counties to tax themselves without losing MFP funds violate the Equal Protection Clause because the limitation is fixed by reference to a standard which relates solely to the amount of property in a county and not to the educational needs of the county? The determination of this question depends first upon whether there is any rational basis for the distinction drawn. If there is a rational basis for the distinction, it must then be determined if the right which is infringed is "a basic, fundamental right," and, if so, whether the distinction which the legislature has drawn serves a "compelling state interest." *McDonald v. Board of Election*, 1969, 394 U.S. 802, 806-07, 89 S.Ct. 1404, 22 L.Ed.2d 739.

We start with the proposition that the equal protection clause requires "the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged." *Reynolds v. Sims*, 1964, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506. Even though the Act in question applies uniformly to each county it may nevertheless violate the Equal Protection Clause if its effect is discriminatory. *See McLaughlin v. Florida*, 1964, 379 U.S. 184, 191, 85 S.Ct. 283, 13 L.Ed.2d 222.

What rational basis can be found for the distinctions that are inherent in the Act? Do they have any rational relationship to a legitimate state end or are they based on reasons totally unrelated to the pursuit of that goal? *McDonald v. Board of Election, supra.* What interest has the State of Florida in preventing its poorer counties from

providing as good an education for their children as its richer counties? As postulated by the plaintiffs, "The legislature says to a county, 'You may not raise your own taxes to improve your own school system, even though that is what the voters of your county want to do.'" We have searched in vain for some legitimate state end for the discriminatory treatment imposed by the Act.

While the state undoubtedly has a valid interest in preserving the fiscal integrity of its programs, and may legitimately attempt to limit its expenditures for public education, or any other purpose, it "may not accomplish such a purpose by invidious discrimination between classes of its citizens." *Shapiro v. Thompson*, 1969, 394 U.S. 618, 633, 89 S.Ct. 1322, 22 L.Ed.2d 600.

Stressing education as a "sine qua non to the proper functioning of our polity," plaintiffs urge that education must be regarded as a fundamental right and that rather than apply the "rational basis" standard, the Act can be sustained only if it can be shown to promote a "compelling governmental interest." *Shapiro v. Thompson, supra; McDonald v. Board of Election Commissioners, supra.* Having concluded that there is no rational basis for the distinction which the legislature has drawn, we decline the invitation to explore the fundamental-right-to-an-education thesis; and thus we do not reach the more exacting "compelling interest" approach.

We are not unmindful of the recent decision of *McInnis v. Shapiro*,[1] N.D.Ill. 1968, 293 F. Supp. 327, (three-judge

[1] Judge Bell wrote a strong dissent in the case *sub judice* when it was on appeal from a dismissal by a single District Judge. *Hargraves v. McKinney, supra,* at 328 He expressed the view that a federal court should be reluctant to interfere with the fiscal affairs of the state; that no discrimination could be shown because there is no uniform valuation of property in Florida for assessment purposes, and that in the light of *McInnis* the equal protection clause did not require the apportioning of school funds among the districts according to the educational needs of the students. After a discussion of *McInnis*, we will take up the first two grounds of the dissent *post*.

court), *aff'd sub nom. McInnis v. Ogilvie*, 1969, 394 U.S. 322, (followed by *Burruss v. Wilkerson*, W.D. Va. 1969, 301 F. Supp. 1237, (three-judge court), *aff'd*, ___ U.S. ___, 38 LW 3310 (1970)), which held that the Fourteenth Amendment does not require that public school expenditures be made only on the basis of pupils' educational needs. However, *McInnis* is readily distinguishable from the instant case. There the laws structuring the financing of public schools in Illinois were challenged because "State statutes which permit such wide variations [in the expenditure per student from district to district] allegedly deny the less fortunate Illinois students of their Constitutional rights." *McInnis*, at 330. The Court carefully pointed out that "the General Assembly's delegation of authority to school districts appears designed to allow individual localities to determine their own tax burden according to the importance which they place upon public schools." *Id.* at 333. This delegation of power was upheld. The opposite situation confronts us in this case where the school districts (counties) are seeking, through the plaintiffs, *to be able* "to determine their own tax burden according to the importance which they place upon public schools.

The Florida Act *prevents* the *local Boards* from adequately financing their children's education. The complaint is not that the state *permits* the Boards to spend less, but that it *requires* them to spend less. Plaintiffs are asking to be able to *raise* more money *locally*. In *McInnis* the plaintiffs wanted the *state* to *give* them more. Irrespective of the plaintiffs' successful attack on the Act, we know that there will continue to be disparities in per pupil expenditures in Florida, either because some counties may not desire to spend as much as other counties on the education of their children, or because, in the poorer counties, they cannot. Plaintiffs do not contest the variations in per pupil expenditures from these causes, but only "the unequal impediment

placed on us by the state because we are poor." We consider this to be a fundamental distinction between the cases.

The alternative ground for denying relief in *McInnis* was that reallocation of state funds was sought on the basis of varying educational needs of the individual students. How this was to be achieved was unclear, and the term "educational needs" was found to be a nebulous concept. The court found that, in any event, "educational need" was a judicially unmanageable standard. 293 F. Supp. at 336.

In contrast, in the instant case the plaintiffs' argument simply stated is that the Equal Protection Clause *forbids* a state from allocating authority to tax by reference to a formula based on wealth. Unlike the broad relief sought in *McInnis*, the remedy here is simple—an injunction against state officials from taking any action because of a county's refusal to limit its taxes to ten mills imposed by the Act. We conclude that the problems presented by *McInnis* are not present here.

As an epilogue, when this case was before the Court of Appeals the Plaintiffs sought to require various local tax collectors to collect more than $62,000,000 in back taxes. By amendment before this Court, the only relief sought is an injunction against the application of the Millage Rollback Act. The granting of this relief will give the disadvantaged counties authority to raise their taxes above the ten mill limit, and the defendants will continue to distribute the MFP funds to the local counties in precisely the same manner and to the same extent as in the past. Thus, our judgment holding the Act unconstitutional will not interfere at all with the state's fiscal affairs and operations, nor will it interfere with the orderly and effective

operation of the schools or the assessment and collection of taxes."

For the reasons we have outlined we hold that the provisions of the Millage Rollback Act, F.S.A. § 236.251—which required as a condition of participation in the state's Minimum Foundation Program that a county board of public instruction "shall levy no more than ten mills of tax on the non-exempt assessed valuation of the county, exclusive of voted district building and bus, required debt service, and the millage required for junior college minimum effort"—is unconstitutional. The plaintiffs' Motion for Summary Judgment is granted and the defendants are enjoined from withholding MFP funds from any county by virtue of the provisions of such Act.

Entered:
May 8, 1970

DAVID W. DYER
United States Circuit Judge

JOSEPH P. LIEB
United States District Judge

BEN KRENTZMAN
United States District Judge

[5] The amendment of the complaint and change in the relief sought has, we believe, overcome the objections voiced by Judge Bell in his dissent to the convening of a three-judge court. *See* note 4, *supra*.

APPENDIX

The following counties have enforced millage reductions in 1968-69:

County	*1967-68 Operating Millage*	*1968-69 Operating Millage*	*Enforced Millage Decrease*	*Approximate Dollar Reduction*
Alachua	13.0	10.60	2.40	$ 802,517
Brevard	14.88	11.29	3.59	2,921,310
Broward	10.67	10.24	.43	1,312,304
Collier	11.45	10.00	—0—*	
Columbia	11.729	10.00	1.729	135,953
Dade	12.32	10.28	2.04	12,812,703
Dixie	14.874	10.8737	4.0003	77,867
Duval	15.8963	10.6701	5.2262	8,899,894
Escambia	13.183	10.00	—0—*	
Gadsden	15.50	10.45	5.05	343,313
Gulf	13.30	10.59	2.71	108,410
Hernando	12.868	10.00	2.868	235,342
Hillsborough	14.206	10.00	4.206	6,609,052
Leon	11.762	10.00	1.762	635,173
Manatee	12.00	10.46	1.54	485,479
Nassau	12.42	10.86	1.56	114,887
Orange	14.80	10.40	4.40	5,343,076
Pasco	11.425	10.00	1.425	263,289
Pinellas	17.00	10.65	6.35	9,481,993
Putnam	14.271	11.47	2.801	354,447
Seminole	12.75	10.44	2.31	549,573
Taylor	11.6196	10.2593	1.3603	90,050
Volusia	14.65	10.8936	3.7564	2,449,349
Walton	12.00	11.00	1.00	48,930
				$54,074,911

*Freeholders voted zero district millage for 1968-69 and 1969-70.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF FLORIDA

ROBERT H. HARGRAVE, et al., Plaintiffs, v. GOVERNOR CLAUDE R. KIRK, JR., Governor State of Florida, RAY C. OSBORNE, Lieutenant Governor, State of Florida, TOM ADAMS, Secretary of State, State of Florida, EARL FAIRCLOTH, Attorney General, State of Florida, FRED O. DICKINSON, JR., Comptroller, State of Florida, BROWARD WILLIAMS, Treasurer, State of Florida, FLOYD T. CHRISTIAN, Commissioner of Education, State of Florida, and DOYLE CONNER, Commissioner of Agriculture, State of Florida, Defendants.	)	Civil Action No. 68-463T

NOTICE OF APPEAL

Notice is hereby given that the above named Defendants hereby appeal to the Supreme Court of the United States from that Judgment and Order of the United States District Court for the Middle District of Florida, Tampa Division, entered May 8, 1970, wherein and whereby the Court found Section 236.251, Florida Statutes, to be unconstitutional and wherein and whereby the Court enjoined the Defendants from withholding distribution of state school moneys to local school boards when such distribution is prohibited by the provisions of Section 236.251, Florida Statutes.

The statutes under which this appeal is taken to the

Supreme Court of the United States are 28 U.S.C. §§ 2281, 2284, 1253 and 2101.

Dated at Tallahassee, Florida this 2nd day of June, 1970.

RIVERS BUFORD, JR.
General Counsel
State Board of Education
347 South Duval Street
Tallahassee, Florida 32304

[Certificate of service omitted in printing.]